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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/695,851	10/29/2003	Brian Brandes	P/8-28	7825

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Philip M. Weiss, Esq.
Weiss & Weiss
Suite 251
310 Old Country Road
Mineola, NY 11501

EXAMINER	
THEIN, MARIA TERESA T	
ART UNIT	PAPER NUMBER
3627	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/695,851	BRANDES, BRIAN	
	Examiner	Art Unit	
	MARISSA THEIN	3627	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *14 October 2008*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-5* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-5* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Response to Amendment

Applicant's "Response to Office Action" filed on October 14, 2008 has been considered.

Applicant's response by virtue of amendment to claims 1-5 has overcome the Examiner's rejection under 35 USC § 101.

Claims 1 and 5 are amended. Claims 1-5 remain pending in this application.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

> The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1-5 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The recitation of "packaging said light bulbs and placing information on said packaging to a user regarding which light bulbs perform well with which color pallet of a room; and merchandising said light bulbs by placing said information on displays visible to a user" and "marking on said packaging how colors in a room are effected by said light bulb by providing information to a user about how said spectrum of light is affected by said light bulb" are not described or supported in the specification. The specification recites to "package and market the light bulbs of the

present invention based on room color" (Summary of Invention, page 6, third paragraph); "a consumer to select a light bulb that works with the color pallet that the user has chosen for their room" (Summary of Invention, page 6, third paragraph); and "marketing these products based on room color....A consumer can now select a light bulb that will work with the color pallet that they have chosen for their room" (Detailed Description, page 7, first paragraph) do not recite "packaging said light bulbs and placing information on said packaging to a user regarding which light bulbs perform well with which color pallet of a room; and merchandising said light bulbs by placing said information on displays visible to a user" and "marking on said packaging how colors in a room are effected by said light bulb by providing information to a user about how said spectrum of light is affected by said light bulb".

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,794,217 to Allen in view of U.S. Patent Application No. 2005/0040774 to Mueller et al. and in further view of U.S. Patent No. 5,445,272 to Crisp.

Regarding claims 1-4, Allen discloses the method of selling items comprising the manufacturing, packaging and merchandising of items (abstract; col. 8, lines 19-20; col.

4, lines 12-35). However, Allen does not explicitly disclose the manufacturing light bulbs based on room color; adjusting Kelvin rating on light bulbs; light bulbs affect spectrum of visible light that is emitted; and light bulbs affect spectrum that has been created and down plays colors that are not. Furthermore, Allen does not explicitly discloses placing information on said packaging to a user regarding which light bulbs perform well with which color pallet of a room and placing said information on display visible to a user.

Mueller, on the other hand, teaches the manufacturing light bulbs based on room color; adjusting Kelvin rating on light bulbs; light bulbs affect spectrum of visible light that is emitted; and light bulbs affect spectrum that has been created and down plays colors that are not (abstract; paragraphs 26-27; paragraph 128; paragraph 187; paragraph 192).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the method of Allen, to include the manufacturing light bulbs based on room color; adjusting Kelvin rating on light bulbs; light bulbs affect spectrum of visible light that is emitted; and light bulbs affect spectrum that has been created and down plays colors that are not, as taught by Mueller, in order to specify a point within the range of color producible by a lighting fixture that will be the point of highest intensity (Mueller, paragraph 19).

The combination of Allen and Mueller does not disclose placing information on said packaging to a user regarding which light bulbs perform well with which color pallet of a room and placing said information on display visible to a user. Crisp, on the other

hand, teaches placing information on said packaging to a user regarding which light bulbs perform well with which color information and placing said information on display visible to a user (col. 1, lines 20-23; col. 2, lines 26-29; col. 1, lines 61-66).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the combination, to include placing information on said packaging to a user regarding which light bulbs perform well with which color pallet of a room and placing said information on display visible to a user, as taught by Crisp, in order to provide packaging information that clearly and efficiently indicates the limited mating capability of the various products (Crisp, col. 1, lines 20-24).

However, the information the use for a specific color pallet of room is non-functional description data, not functionally related to the steps of the process. Therefore, this information adds little, if anything to the claimed steps and thus will not serve as a limitation on these claims to distinguish over the combination of Allen, Mueller and Crisp. The ordering steps would be performed the same regardless of the information on the packaging. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, see In re Gulack, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); In re Lowry, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time of the invention was made to have any type of information on the packaging because such information do not functionally relate to the steps in the process claimed

and because the subjective interpretation of the information does not patentability distinguish the claimed invention.

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent Application No. 2005/0040774 to Mueller et al. in view of U.S. Patent No. 5,794,217 to Allen. and in further view of U.S. Patent No. 5,445,272 to Crisp.

Mueller discloses the method comprising adjusting a Kelvin rating on said lights bulbs; determining said spectrum of light affect by said light bulb; and how colors in a room are effect by said light bulb (abstract; paragraphs 26-27; paragraph 128; paragraph 187; paragraph 192). However, Mueller does not explicitly disclose packaging and markings on said packaging and providing information to a user about how said spectrum of light is affected.

Allen, on the other hand, teaches packaging and markings on said packaging (col. 8, lines 19-20).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the method of Mueller, to include packaging and markings on said packaging, as taught by Allen, in order to provide a method which permits for improved marketing, selection and previewing capabilities without the need for maintaining large inventories of material at a point of sale location (Allen, col. 3, lines 20-23).

The combination of Mueller and Allen does not disclose providing information to a user about how said spectrum of light is affected. Crisp, on the other hand, teaches

providing information to a user about the light bulb (col. 1, lines 20-23; col. 2, lines 26-29; col. 1, lines 61-66).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the combination, to include providing information to a user about the light bulb, as taught by Crisp, in order to provide packaging information that clearly and efficiently indicates the limited mating capability of the various products (Crisp, col. 1, lines 20-24).

However, the specific information provided to the user (how said spectrum of light is affected by said light bulb) is non-functional description data, not functionally related to the steps of the process. Therefore, this information adds little, if anything to the claimed steps and thus will not serve as a limitation on these claims to distinguish over the combination of Mueller, Allen and Crisp. The ordering steps would be performed the same regardless of the information. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, see In re Gulack, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); In re Lowry, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time of the invention was made to have any type of information because such information do not functionally relate to the steps in the process claimed and because the subjective interpretation of the information does not patentability distinguish the claimed invention.

Response to Arguments

Applicant's arguments with respect to claims 1-5 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL.** See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MARISSA THEIN whose telephone number is (571)272-6764. The examiner can normally be reached on M-F 8:00-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ryan Zeender can be reached on 571-272-6790. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/M. T./
Examiner, Art Unit 3627
January 5, 2009

/F. Ryan Zeender/
Supervisory Patent Examiner, Art Unit 3627